



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0330]

RIN 1625-AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; effective date extension and request for comment.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone on certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice / Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, through July 1, 2022. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: The effective period of 33 CFR 165.T05-0330, published at 87 FR 28776 on May 11, 2022, which was set to expire at 8 p.m. on June 18, 2022, is extended through 8 p.m. on July 1, 2022.

Comments and related material must be received on or before [INSERT 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0330 in the search box and

click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 11, 2022, the Coast Guard issued a final rule establishing a temporary safety zone on certain navigable waters of the Potomac River to protect persons and vessels during critical operations requiring a large crane within the federal navigation channel to lift and set 250-ton pier protection fender ring precast segments adjacent to the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge (87 FR 28776). The original rule runs through 8 p.m. on June 18, 2022. However, additional time is needed to conduct the critical heavy lift operations, and, as a result, the Coast Guard needs to extend the safety zone through 8 p.m. on July 1, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause

exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the continuing critical bridge construction operations and required publication of this extension. Immediate action is needed to continue to protect persons and vessels from the hazards associated with carrying out large crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge that must occur within the federal navigation channel. It is impracticable and contrary to the public interest to publish an NPRM, because the extension needs to be in place by June 18, 2022. However, the Coast Guard is providing an opportunity to comment while the rule is in effect and may amend the rule after it becomes effective, if necessary.

We are issuing this rule under 5 U.S.C. 553(d)(3), and in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to continue to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge to be conducted within the federal navigation channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined there are potential hazards associated with critical bridge construction operations. The work is a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge construction site. This rule is

needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule extends the effective dates of an established safety zone, originally effective May 16, 2022 through 8 p.m. on June 18, 2022, through 8 p.m. on July 1, 2022. This extension makes no other changes to the original rule other than the end effective date. The safety zone includes all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point located between Charles County, MD and King George County, VA. The zone is approximately 450 yards in width and 270 yards in length. The extended duration of the zone is intended to protect personnel and the marine environment in these navigable waters while pier protection fender ring precast segments are lifted and set at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. This safety zone will impact a small designated area of the Potomac River for 13 days, but we anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic, including recreational vessels, not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 13 total days that will prohibit entry within a portion of the

Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0330 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments

will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. In § 165.T05-0330, revise paragraph (e) to read as follows:

§ 165.T05-0330 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

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(e) *Enforcement period.* The section will be enforced from 7 a.m. on May 16, 2022, through 8 p.m. on July 1, 2022.

Dated: June 3, 2022.

David E. O'Connell,
Captain, U.S. Coast Guard,
Captain of the Port Sector Maryland-National Capital Region.

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